STATE OF MICHIGAN

COURT OF APPEALS

CITY OF YPSILANTI,

Plaintiff-Appellee,

v

LYNNE DEAN TAYLOR, a/k/a LYNNE DEAN SCHMIEDEKE,

Defendant-Appellant,

and

ALBINA M. AGOSTI,

Defendant.

UNPUBLISHED
October 23, 2007

No. 275032
Washtenaw Circuit Court
LC No. 06-000703-CH

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Defendant Taylor appeals as of right from a circuit court order quieting title to certain land in plaintiff free of any deed restrictions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Richard and Jane Schneidewind owned certain property in Ypsilanti. In November 1956, they reached an agreement to sell part of the property to Taylor and her husband. It was intended that the property to be transferred would be subject to certain building restrictions to be included in the deed. On January 24, 1957, the Schneidewinds transferred another part of the property to defendant Agosti. Although it was apparently intended that the land sold to Agosti was to be subject to restrictions similar to those intended to apply to Taylor's property, the deed stated only that the property was subject to "easements and restrictions of record." On April 29, 1957, Taylor and her husband acquired their property from the Schneidewinds. Most of the intended restrictions were detailed in the deed itself, which was recorded in Liber 782, page 650. In November 1960, Agosti transferred her property to plaintiff. The deed stated in part that it was "subject to the restrictions contained in the instrument recorded in Liber 782, page 680, Washtenaw County Records." It is undisputed that Liber 782 does not contain a page 680. The trial court ultimately determined that the restriction was unenforceable.

Defendant first contends that the trial court erred in granting plaintiff's motion for a default judgment with regard to Agosti and her heirs. Although defendant raised this as an issue in her statement of questions presented, she neglected to brief the merits of the argument and to cite any supporting authority. Therefore, the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). A party cannot "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Defendant next contends that the trial court erred in granting plaintiff's motion for summary disposition against her. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The trial court's ruling in an equitable action to quiet title is also reviewed de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

Defendant's sole argument is that, inasmuch as plaintiff's deed was apparently intended to refer to the restrictions in her own deed, she is entitled to enforce her deed restrictions against plaintiff under the doctrine of reciprocal negative easements. That doctrine has been explained thusly:

> If the owner of two or more lots, so situated as to bear the relation, sells one with restrictions of benefit to the land retained, the servitude becomes mutual, and, during the period of restraint, the owner of the lot or lots retained can do nothing forbidden to the owner of the lot sold. For want of a better descriptive term this is styled a reciprocal negative easement. It runs with the land sold by virtue of express fastening and abides with the land retained until loosened by expiration of its period of service or by events working its destruction. It is not personal to owners but operative upon use of the land by any owner having actual or constructive notice thereof. It is an easement passing its benefits and carrying its obligations to all purchasers of land subject to its affirmation or negative mandates. . . . It must start with a common owner. Reciprocal negative easements are never retroactive; the very nature of their origin forbids. They arise, if at all, out of a benefit accorded land retained, by restrictions upon neighboring land sold by a common owner. [*Sanborn v McLean*, 233 Mich 227, 229-230; 206 NW 496 (1925).]

As stated more succinctly by one commentator,

> The doctrine appears to apply only to lots in a development retained by the common grantor when he or she has conveyed others with some affirmative or negative restriction or otherwise evidenced a common scheme of development. But once established, it applies against both the common grantor who retains lots and those who subsequently acquire an interest in them. [2 Cameron, Michigan Real Property Law (3d ed), § 22.13, p 1253.]

The facts of this case do not support the creation of a reciprocal negative easement. For the doctrine to apply, the Schneidewinds as the common grantors would have had to have transferred part of the property to defendant subject to certain restrictions and then, at a later

date, have transferred another part of the property, previously retained, to plaintiff's predecessor in interest. What actually happened was that the Schneidewinds transferred a part of their property to plaintiff's predecessor in interest without any significant deed restrictions before they transferred another part of their property to defendant subject to express deed restrictions. Because a reciprocal negative easement cannot arise retroactively, the restrictions imposed on defendant's property do not apply to plaintiff's land, which was sold by the Schneidewinds before defendant acquired her property.

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis